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C O N F I D E N T I A L SECTION 01 OF 03 KYIV 000784

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TAGS: [PGOV](#) [KDEM](#) [PREL](#) [PHUM](#) [PINR](#) [UP](#)  
SUBJECT: UKRAINE: CONSTITUTIONAL CRISIS OVER RADA DISMISSAL  
DECREE: YUSHCHENKO AND YANUKOVYCH VIEWS

REF: A. KYIV 746  
[1](#)B. EMBASSY KYIV-STATE 4/2 AND 4/3 EMAILS (VARIOUS)

Classified By: Ambassador for reasons 1.4 (b,d).

[1](#)1. (C) Summary: Justifying his April 2 decree dismissing the Rada (parliament) and calling pre-term elections for May 27, President Yushchenko told G-7 ambassadors April 3 that new elections were a democratic instrument to resolve a political crisis that stemmed from a parliamentary crisis. The decree to hold new elections had been the only option left to him; he warned that the democratic gains made the past two years were at risk. Yushchenko refused to consider seeking a Constitutional Court judgment on the decree. He had warned heads of military and intelligence agencies against the use of force. Yushchenko said he would soon telephone European and North American heads of state to enlist G-7 countries' support. In an earlier address before coalition members and the Cabinet at the Rada, PM Yanukovych appealed to Yushchenko to avert a disaster by agreeing to negotiate on an outcome satisfactory to all sides but also vowed a firm response if Yushchenko did not. Yanukovych also insisted the Rada would continue operating until the Constitutional Court had ruled on Yushchenko's decree.

[1](#)2. (C) Comment: Yushchenko was rigid and inflexible in his insistence on pre-term elections and ruling out further negotiations, though his deputy Presidential Secretariat head Oleksandr Chaliy signaled on the way out that three scenarios remained in play: elections, a constitutional court ruling, and a negotiated resolution to the crisis. Convincing Yushchenko to reengage may well be difficult, since Yushchenko appears now to feel that his efforts at working with Yanukovych and Moroz the past eight months have been spurned, or worse, taken advantage of. On the other hand, elections will reopen wounds now starting to heal -- status of Russian language and NATO -- and possibly exacerbate tendencies toward disunity rather than national unity. For its part, the governing coalition did not help matters by voting late April 2 to reseat the Kivalov-led Central Electoral Commission which declared Yanukovych President in November 2004 based on the falsified election results which sparked the Orange Revolution. End summary and comment.

Why the decree was necessary: Yushchenko's Rationale  
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[1](#)3. (C) The April 3 edition of the Presidential Bulletin of Ukraine officially promulgated President Yushchenko's April 2 decree dissolving the Rada and setting new elections for May [1](#)27. In an April 3 meeting with G-7 ambassadors (i.e., without Russian Ambassador Chernomyrdin) and the EU mission, Yushchenko said that his decree to hold new elections had been the only option left to him to resolve the political crisis which had arisen from a parliamentary crisis. In his view, the latter crisis had arisen because movements of individual Rada MPs from the opposition to the ruling

coalition meant the Rada's composition no longer reflected the political results of the March 2006 elections, which produced an approximately equal balance between the ruling coalition and the opposition that resulted from the March parliamentary election (240-210). Article 83 of the constitution required the coalition to be made up of factions, and not individuals. Now that the coalition had lured over additional deputies, using bribes and blackmail, it had the real possibility of assembling 300 votes, allowing it to enact legislation that would be veto-proof.

¶4. (C) Yanukovych and the Cabinet of Ministers were engaged in a usurpation of presidential powers that could not be allowed to continue, Yushchenko argued and later claiming that all the democratic gains made in the past two years were at risk. The new Cabinet of Ministers (CabMin) law had been especially problematic, with several provisions that clearly violated the constitution, including procedures on naming the PM, FM, and Defense Minister that encroached on Presidential prerogatives. Yushchenko had submitted 18 requests to the Constitutional Court to review these and other provisions.

¶5. (C) Acknowledging concerns about the precedent of a Rada dismissal, Yushchenko insisted that new elections would lead to a national dialogue and that the election results would bring about a national plan on the way forward that had not occurred in 2006. Unfortunately, the ruling coalition had discarded the "Universal" agreement that could have formed the basis of a unity cabinet. The agreement had enshrined the importance of judicial reform, incorporated agreements on language and religion, and established a common approach to European and Euro-Atlantic integration and a policy on the Single Economic Space. New elections would be the basis for a renewed consideration of the Universal agreement and lead

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to healing the divisions between eastern and western Ukraine.

¶6. (SBU) Yushchenko said he had called in the Ministers of Interior and Defense earlier in the day to emphasize that no forces should be moved into the area around Kyiv. (Note: The Presidential website reported that Yushchenko met with the heads of all national law enforcement and intelligence bodies to caution them that the current situation "was a political conflict to be resolved by political means" and enjoined them against any use of force.) Yushchenko said that, later April 3, he would make a public appeal to all sides at the Maidan, European Square, or other venues for past rallies to minimize the possibility of violence.

¶7. (C) Yushchenko said he had discussed his concerns April 2 with Rada Speaker Oleksandr Moroz during mandatory pre-dismissal consultations. He had asked Moroz to implement four measures: to stabilize the situation in the Rada, including through amendments to Rada Rules; to launch his requested Constitutional Commission that could rebalance the power relationships in government; to enact the Universal as a law; and to amend the CabMin law to eliminate its unconstitutional features. Instead, Moroz had convened a special session of the Verkhovna Rada late April 2 and initiated annulment of the December 2004 changes to the Central Electoral Commission. The step had driven home to Yushchenko that he could not reach a compromise with Moroz, closing the possibility of negotiating for several more days.

¶8. (C) Ambassador asked Yushchenko about the differing opinions of legal experts on the constitutionality of the decree and asked if he would be willing to abide by a Constitutional Court ruling on the decree. Yushchenko ducked the question, noting that the Constitutional Court had been silent in its eight months of operation, after being left inquorate for 18 months by Regions and Socialists' refusal to seat nominated judges. When the Italian Ambassador pushed the point, Yushchenko said a political decision needed to be reached first on his decree, and then the Constitutional Court could make a ruling. He insisted, however, that

elections must be held. He asked the ambassadors to relay his arguments to their capitals and said he would soon telephone their heads of state to enlist G-7 countries' support. (Note: Yushchenko mentioned he had already spoken with Russian President Putin April 2 when he had cancelled his planned April 3 visit to Moscow.)

Walk this back, Mr. President - Yanukovych's position  
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¶9. (U) The Rada's coalition majority convened at 10:30 a.m., with the entire Cabinet, led by PM Yanukovych, present to debate the decree. Coalition faction leaders, from the Party of Region (POR), Socialists (SPU), and Communists (CPU) made statements reiterating coalition positions from the previous evening (ref B).

¶10. (U) Yanukovych charged that what he called an "infamous" decree was aimed at usurpation of power and dissolution of a legitimate parliament. Describing the decree as an attempt against the constitutional order, Yanukovych said that it was designed to create either artificial conditions leading to incessant elections or a return to the old constitution and restoration of autocratic presidential rule. Yanukovych appealed to Yushchenko to avert a disaster by agreeing to negotiate on an outcome satisfactory to all sides. Saying "Mr. President, make this step toward Ukraine," Yanukovych warned Yushchenko that he would ultimately bear the responsibility for his refusal to engage in constructive dialogue with a legitimate government.

¶11. (U) Yanukovych assured the Ukrainian public that neither the President nor the adventurists who had convinced him to issue the decree would succeed in disrupting the Cabinet's work, because the Cabinet of Ministers had a mandate from the voters and the ruling coalition. Ukraine did not need such an upheaval that would lead living standards to decline if not resolved soon, he claimed. The Rada should continue to work as usual until the Constitutional Court had ruled on the presidential decree. The Executive Branch of government would also continue to carry out its duties, despite what he called the opposition's designs to paralyze executive branch operations. Irresponsible politicians would not succeed in plunging Ukraine into crisis and confrontation. Any change should be implemented in accordance with the constitution. No one would disrupt reforms aimed at Ukraine's European integration, and Ukraine would emerge from the current situation even stronger. Yanukovych called on all Ukrainians to unite to protect the Constitution, freedom, democracy, and the rule of law.

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¶12. (U) Coalition Rada deputies' speeches after Yanukovych stuck to his general themes. A common charge was that the opposition had engineered this crisis in an attempt to derail economic progress achieved under Yanukovych and his cabinet. Rada Human Rights Ombudsman Nina Karpachova detailed the reasons that she had concluded the presidential decree was unconstitutional and appealed for a non-violent resolution to the crisis. Socialist Party deputy Serhiy Kuzmenko said the Verkhovna Rada should institute impeachment proceedings against Yushchenko. Communist Party faction head Petro Symonenko railed that the opposition had received its orders from the U.S. to press for Rada dissolution (note: a reference to opposition leader Yuliya Tymoshenko's recent visit to Washington; embarrassed Socialist Chair of the International Relations Committee Shybko later apologized to us for Symonenko's outburst) and that Ukrainians should not be surprised if foreign troops were to land in Ukraine to finish developments started by the Orange Revolution.

¶13. (U) Visit Embassy Kyiv's classified website:  
[www.state.sgov.gov/p/eur/kiev](http://www.state.sgov.gov/p/eur/kiev).  
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